

EVENT VIOLATION
INSPECTOR'S STATEMENT
MINERALS REGULATORY PROGRAM

Company/Mine: H.E. Davis Construction
Permit #: M/023/016

CO # MC-05-04-01
Violation # 1 of 1

SERIOUSNESS

1. What type of event is applicable to the regulation cited? Refer to the DOGM reference list of event below and remember that **the event is NOT the same as the violation**. Mark and explain each event.

- | | | |
|-------------------------------------|----|--|
| <input type="checkbox"/> | a. | Activity outside the approved permit area. |
| <input type="checkbox"/> | b. | Injury to the public (public safety). |
| <input type="checkbox"/> | c. | Damage to property. |
| <input checked="" type="checkbox"/> | d. | Conducting activities without appropriate approvals. |
| <input type="checkbox"/> | e. | Environmental harm. |
| <input type="checkbox"/> | f. | Water pollution. |
| <input type="checkbox"/> | g. | Loss of reclamation/revegetation potential. |
| <input type="checkbox"/> | h. | Reduced establishment, diverse and effective vegetative cover. |
| <input type="checkbox"/> | i. | No event occurred as a result of the violation. |
| <input type="checkbox"/> | j. | Other. |

Explanation: After a detailed research of the correspondence regarding the Chicken Creek Mine it was determined that the operator never obtained approval from the U.S. Forest Service to mine on Forest Service land. It was decided that the operation could not continue to operate on Forest Service land without this approval.

2. Has the event or damage occurred? Yes
If yes, describe it. If no, what would cause it to occur and what is the probability of the event(s) occurring? (None, Unlikely, Likely).

Explanation: Approximately 11 acres of mining related disturbance is found on U.S. Forest Service Land.

3. Did any damage occur as a result of the violation? Yes

4. If yes, describe the duration and extent of the damage or impact. How much damage may have occurred if the violation had not been discovered by a DOGM inspector? Describe this potential damage and whether or not it would extend off the disturbed and/or permit area.

Explanation: The operation has mined approximated 11 acres on Forest Service land and 8 acres on private land. The existing vegetation and topsoil have been removed and a pit dug to mine

the gypsum. The permit currently in place is only for a Small Mine Operation or a five acre area of disturbance.

B. DEGREE OF FAULT (Check the statements which apply to the violation and discuss).

- ☐ Was the violation not the fault of the operator (due to vandalism or an act of God), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.

Explanation: _____

- ☒ Was the violation the result of not knowing about DOGM regulations, indifference to DOGM regulations or the result of lack of reasonable care.

Explanation: The operation has been five years without a formal Large Mine approval. The current disturbance on both private and public land is approximately 19 acres, although an interim bond is in place for 40 acres.

- ☐ If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.

Explanation: _____

- ☒ Was the operator in violation of a specific permit condition?

Explanation: Did not obtain approval from the U.S. Forest Service in a timely manner and continued to operate on their land. On 5/5/2004 the Division sent the operator a conditional tentative approval letter stating that prior to obtaining approval from the Division the operator must obtain approval from the U.S. Forest Service

- ☐ Has DOGM cited the violation in the past? If so, give the dates and the type of warning or enforcement action taken.

Explanation: _____

Was any economic benefit gained by the operator for failure to comply? Yes
If yes explain.

Explanation: The operator continued to mine and sell gypsum without having formal approval.

GOOD FAITH

1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give date) and describe the measures the operator took to comply as rapidly as possible.

Explanation: _____

2. Explain whether or not the operator had the necessary resources on site to achieve compliance.

Explanation: It is questionable if the operator has put forth the effort to gain this approval in a timely manner given the fact the operation failed to respond to the U.S. Forest Service's 5/14/2004 letter by the date of the Cessation Order. The only correspondence the Division has received is a letter dated 2/8/2005 stating that H.E. Davis was working on the last of the Forest Service's questions. H.E. Davis stated in this letter that they could not supply the cultural report until the snow was off the ground, but that all other responses would be addressed by 3/11/05.

3. Was the submission of plans prior to physical activity required by this NOV / CO? Yes If yes, explain.

Explanation: The operator is required to submit a complete Large Mining Application and receive approval for conducting Large Mining Operations within 60 days or March 25, 2005.

Tom Munson
Authorized Representative

Tom Munson
Signature

2/16/05
Date